

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DANYA RATLIFF

V.

BETTY COZETTE NIX, *et al.*

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CIVIL ACTION NO. 6:16cv1030

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of the motions to dismiss has been presented for consideration. The Report and Recommendation (ECF 19), filed on January 4, 2017, recommends that Defendant Roxie W. Cluck's Motion to Dismiss (ECF 8) and Defendant Judge Randal L. McDonald's Motion to Dismiss (ECF 13) be granted and that the claims against these defendants be dismissed with prejudice. Plaintiff filed written objections to the Report and Recommendation on February 10, 2017.

Having made a *de novo* review of the written objections filed by Plaintiff in response to the Report and Recommendation, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. Plaintiff's objections re-urge her claim that Ms. Cluck and Judge McDonald acted fraudulently in the handling of her father's estate in state court. The facts alleged by Plaintiff against Judge McDonald solely concern Judge

McDonald's judicial actions in the case. As a result, he is entitled to absolute immunity. *See Monroe v. Pape*, 365 U.S. 167, 184 (1961); *accord, Brown v. Miller*, 631 F.2d 408, 410–11 (5th Cir. 1980). Moreover, Plaintiff has not alleged any facts showing that Ms. Cluck acted under of color of state law. Plaintiff's claim against Ms. Cluck pursuant to 42 U.S.C. § 1983 fails to state a claim upon which relief may be granted. To the extent Plaintiff is now asserting a state law claim of fraud against Ms. Cluck, Plaintiff has not alleged facts to support diversity jurisdiction pursuant to 28 U.S.C. § 1332. It is therefore

ORDERED that the Report and Recommendation (ECF 19) is **ADOPTED**. Defendant Roxie W. Cluck's Motion to Dismiss (ECF 8) and Defendant Judge Randal L. McDonald's Motion to Dismiss (ECF 13) are **GRANTED**. The claims against Roxie W. Cluck and Randal L. McDonald are **DISMISSED** with prejudice.

SIGNED this 16th day of February, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE